

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BLACKLIGHT POWER, INC.

Plaintiff,

v.

Q. TODD DICKINSON,

Under Secretary

and Director of Patents

Defendant.

No. 00 0422 EGS

DECLARATION OF ESTHER M. KEPPLINGER

I, Esther M. Kepplinger, declare and state:

1. I am presently employed by the United States Patent and Trademark Office (“USPTO”), and at all times relevant to the matters contained in this declaration, I served as the Director for Technology Center 1700. If called as a witness, I would testify as follows:

2. On Thursday, February 24, 2000, I received a call from Jeffrey Melcher, the attorney for the applicant on application 09/009,294 (“the ‘294 application”). Mr. Melcher indicated that he had received a Notice dated February 17, 2000 stating that the ‘294 application had been withdrawn from issue. I indicated to Mr. Melcher that I was the person that was responsible for the withdrawal.

3. Four days later, Monday, February 28, 2000, Mr. Melcher came to my office. I



explained to Mr. Melcher that I was extremely concerned about the application because it was based on the concept of an electron going to a lower orbital in a fashion that is contrary to the known laws of physics and chemistry. I also may have said that the questionable sciences alleged in patent number 6,024,035 and the '294 application were similar to other questionable sciences such as "cold fusion" and "perpetual motion", but I did not tell Mr. Melcher that my concerns relating to the '294 application were based solely on the concepts of "cold fusion" and/or "perpetual motion." My main concern was the proposition that the applicant was claiming the electron going to a lower orbital in a fashion that I knew was contrary to the known laws of physics and chemistry.

4. Mr. Melcher then questioned me as to whether Commissioner Q. Todd Dickinson was involved in the decision to withdraw the '294 application. I specifically stated to Mr. Melcher that Commissioner Dickinson had nothing to do with the initial decision to withdraw the application. I told him that I alone made the decision to withdraw the application based on patentability concerns. At no time did I tell Mr. Melcher that Commissioner Dickinson directed me or anyone else to withdraw the application from issue.

5. I did not discuss my decision to withdraw the application with any person outside the USPTO. No one directed me to make the decision to withdraw the '294 application.

6. Contrary to Mr. Melcher's assertion, my decision was not based in whole or in part on any "perceived 'heat'" the USPTO had received from an undisclosed, outside source.

7. The decision to withdraw the application was based solely on the patentability standards contained in Title 35 of the United States Code.

8. Mr. Melcher and I discussed four other applications by the same applicant that had gone to issue. I told Mr. Melcher that I was "pulling" these applications back from their locations so that I could take a look at them. I did not tell Mr. Melcher that I was going to withdraw these cases from issue. I told him that, unlike the sense of urgency regarding the '294 application, I still

had time to obtain the other four application files for review without withdrawing them from issue. I explained that the reason I hadn't done the same with the '294 application is that it was much closer to its issue date than the other four applications.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

4/14/00
Date

Esther M Kepplinger
Esther M. Kepplinger